IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

SECOND APPEAL ST.NO.9617 OF 2005
WITH
CIVIL APPLICATION NO.1397 OF 2005

M/s.IBP Co.Ltd., Engineering Div.& Anr. ...Appellants.
Vs.
The Municipal corporation of City of Nasik. ...Respondents.
....
Mr. M.M. Sathaye for the Appellants.
Mr. V. A. Gangal for the Respondent.
.....

CORAM : DR. D.Y. CHANDRACHUD, J.

December 19, 2005.

P.C.:

Counsel appearing for the parties are agreed in stating before this Court that the facts of this case are similar to those of Second Appeal No.824 of 2005 which was disposed of by an order dated 18th November 2005.

2. The First Appellate Court has decreed the suit filed by the Municipal Corporation of Nasik, the Respondent herein for unpaid octroi in the amount of Rs.1,91,351.87 together with interest at the rate of 6% from the date of institution of the suit. The

Appellant has deposited an amount of Rs. 1.91 lakhs as directed in the interim order of this Court dated 23rd August, 2005, before the Trial Court.

In **Indian Aluminium Company Limited v. Thane Municipal Corporation** - (AIR 1992 SC 53) the Supreme Court held that the grant of a concessional rate of octroi is subject to the observance of the terms and conditions governing the grant of concession. Hence, a failure to file a declaration in Form 14 would disentitle the undertaking to a concessional rate of octroi duty. The Supreme Court held thus :

"... the concession can be granted only if the raw material is used in the industrial undertaking seeking such concession. For that a verification was necessary and that is why in the rule itself it is mentioned that a declaration has to be filed in Form 14 facilitating verification. Failure to file the same would automatically disentitle the Company from claiming any such concession."

4. The submission urged in these proceedings is that the demand was barred by limitation.

5. In so far as the question of limitation is concerned, no period of limitation is prescribed by the Act. The First Appellate Court has relied upon a judgment of this Court in American Refrigerator Company Limited v. The Pimpri – Chinchwad Municipal Corporation - (1991 (2) Bom.C.R. 642) in holding that even if no period of limitation is prescribed, action for recovery should be taken within a reasonable period of time. Mrs. Justice Sujata Manohar (as the Learned Judge then was) speaking for the Division Bench held thus :

> "It is true that section 142 does not prescribe any period of limitation within which recovery proceedings under Chapter X have to be taken. Nevertheless looking to the scheme for recovery of octroi when an account-current is kept, it would appear that the amount in respect of octroi payable by an importer has to be settled at intervals of one month. For the purpose of checking invoices rule 5 requires the importer to preserve the relevant invoices for a period of one year. Even under Chapter X section 150 sub-section (1) sets out that when any amount becomes due to the Council under this Act, the Chief Officer shall, with the lease practicable delay, cause to be presented to the person liable for the payment thereof a bill for the sum claimed as due. Clearly, therefore, the respondents are required to finalise their claim for octroi dues and present a bill within a reasonable time. Looking to the provisions of the Limitation Act, in our view, a period of 3 years can be considered as a reasonable time within which a bill has to be presented under section 150 of the said Act. It is true that Form 5 requires that an invoice is to be preserved

> only for one year. We have, however, allowed the respondents some further time for the purpose of inspecting the records of the importer and verifying the claim in respect of octroi duty. Even so, in our view maximum indulgence that can be given to the respondents in this connection cannot extend beyond a reasonable time, which, in our view, is a period of three years from the date when the account-current is required to be settled as per section 142."

6. The demand notice and the institution of suit hence were within reasonable time. The suit came to be instituted within a period of three years of the demand notice. It cannot be said that the demand notice was not issued within time.

7. In the circumstances, the Second Appeal does not raise any substantial question of law and shall accordingly stand dismissed.

8. On the request of counsel appearing for the Appellants, there shall be a direction to the effect that the ad interim order of stay which was operating in these proceedings shall continue to remain in operation for a period of four weeks.

In view of the disposal of the Second Appeal, the Civil

Application is rendered infructuous and is accordingly disposed of.